IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16926 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ALI ALAYA BALOCH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16926 of 2003

MR MM TIRMIZI for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under under Article 226 of the Constitution of India for

appropriate writ, order or direction for quashing and setting aside an order dated 21.10.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that six offences under the Bombay Prohibition Act, 1949 were registered against him before Mandvi police station in Kachchh district being CR No. 76/00, 35/01, 52/01, 24/02, 67/02,78/03 and 104/03 on dated 1.8.2000, 7.5.01, 15.8.01, 15.4.02, 24.8.03, 4.7.03 and 13.8.2003 respectively. The cases related to offences punishable under sections 66 and 65 (E) read with section 81 of the Bombay Prohibition Act, 1949. It was also alleged against the petitioner that four witnesses had given statements against the petitioner whose names have not been disclosed to the petitioner.

3. On the strength of the above registered and unregistered cases, a detention order came to be passed on 21.10.2003, Annexure 'A' at page 16 to the petition. The petitioner has challenged the order of detention on several grounds. It has been contended that the petitioner cannot be treated to be bootlegger and there was inordinate delay in passing the order of detention. That the representation of the petitioner was not dealt with and decided in time. Therefore, the order of detention is illegal and requires to be quashed and set aside.

4. On receiving the petition, rule was issued and in response to the notice of rule, Ms. Mita Panchal, learned AGP appears on behalf of the respondents.

During the hearing of the petition, the Learned Advocate for the petitioner states that the detention order is required to be quashed on the principle of parity with Special Civil Application No.16928/2003 which has been decided today by this Court as that matter is identical to the present petition.

5. It is not much in dispute that the present petitioner and the petitioner in the above Special Civil Application both were co-acused and even in the statements of witnesses, both of them have been similarly involved. Therefore, cases against both are identical.

6. It is also not much in dispute that Special Civil Application No.16928/2003 has been allowed today and the

order of detention has been quashed and set aside. Therefore, on the principle of parity, this petitioner is also required to be given same treatment. Therefore this petition is required to be allowed.

7. For the reasons stated in the judgement in Special Civil Application No.16928 of 2003, this petition is allowed. The impugned order dated 21.10.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp